

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

RONALD DAVIDSON,

Plaintiff,

07-CV-599S(Sr)

v.

WESLEY CANFIELD, M.D.,

Defendant.

ORDER

Plaintiff, Ronald Davidson, filed this *pro se* action pursuant to 42 U.S.C. § 1983, alleging that between June and December 24, 2004, while he was incarcerated at the Elmira Correctional Facility (“Elmira”), Wesley Canfield, M.D., Facility Health Services Director at Elmira, arranged for plaintiff’s transfer to Shawangunk Correctional Facility (“Shawangunk”), so as to interfere with scheduled foot surgery and urological surgery, in retaliation for plaintiff’s filing of *Davidson v. Desai*, 03-CV-121. Dkt. ##1 & 5.

Beginning in late June 2011, plaintiff has sought permission to amend his complaint to challenge repeated cancellations of surgery but has failed to comply with the provisions of Local Rule 15 which require a movant seeking to amend or supplement a pleading to

attach an unsigned copy of the proposed amended pleading as an exhibit to the motion. The proposed amended pleading must be a complete pleading superseding the original pleading in all respects. No portion of the prior

pleading shall be incorporated into the proposed amended pleading by reference.

Dkt. ##39, 48, 59, 62, 84 & 86. By Decision and Order entered December 6, 2012, plaintiff was afforded a final opportunity to comply with the requirements of Local Rule 15 and file a motion to amend the complaint, together with a proposed amended complaint no later than January 31, 2013. Dkt. #86.

By letter dated January 21, 2013, plaintiff advised that attorney Andre Ramon Soleil traveled to Shawangunk Correctional Facility on December 20, 2012 to meet with him and

agreed to represent me in bringing an action against The Mount Vernon Hospital, and I gave him my file in that matter. He also took my file in this action, and other actions, and told me that he would consider accepting them or referring them to other counsel. He promised to immediately make copies of the files and return them to me.

To date, he has not done so. Despite my sending him two letters requesting my files back and to inform me if he wants to take on this action, and other, he has not responded to my letters.

Plaintiff informed the Court that he would not be able to move to amend his complaint until Mr. Soleil returned his file.

At a status conference on April 4, 2013, plaintiff reiterated that he was unable to file his motion to amend the complaint because he had given his file to a lawyer who had failed to return it.

By letter dated April 5, 2013, plaintiff enclosed a copy of his grievance to the State of New York Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts accusing attorney Andre Ramon Soleil of taking several of his legal files during a meeting with plaintiff at Shawangunk Correctional Facility "in order to consider taking them on or referring them to other counsel" and failing to return the files to plaintiff despite his promise "to immediately copy them and return them to me." Plaintiff also attached to his grievance a letter from Mr. Soleil indicating that "he would be happy to take [plaintiff's] case" as described in plaintiff's letter of November 19, 2012 and an executed retainer agreement dated December 20, 2012 pertaining to a case against the State of New York which plaintiff states is unrelated to the claims set forth in his letter.

The Court telephoned Mr. Soleil on April 26, 2013 and requested that he address plaintiff's claim that he possessed plaintiff's file in this action in a letter to the Court. Mr. Soleil represented that he would do so forthwith, however, no such communication has been received. Accordingly,

IT IS HEREBY ORDERED that Andre Ramon Soleil declare to the Court the status of his relationship, if any, with plaintiff with respect to this action and whether he received documents relating to this action from plaintiff, and if, so, whether and when such documents were returned to plaintiff no later than **July 12, 2013**; and

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this Order, certified mail, to Andre Ramon Soleil, 32 Court Street, Suite 1107, Brooklyn, New York 11201-4440.

SO ORDERED.

DATED: Buffalo, New York
June 21, 2013

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge